IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.24254 of 2007
BAIJU CHOUDHARY, S/O LATE PANNA CHOUDHARY, RESIDENT OF MOHALLA-EAST LOHANIPUR, BHUSHAN GALI, P.S. KADAMKUAN, DISTRICT-PATNA…….PETITIONER.

Versus

1. **THE STATE OF BIHAR .**
2. **SONA DEVI, D/O BALESHWAR CHOUDHARY, RESIDENT OF BAKHTIYARPUR, DISTRICT-PATNA.**

…….OPPOSITE PARTIES.

For the Petitioner : Mr. Shivendra Kumar Sinha, Advocate.
For the State : Mr. Jharkhandi Upadhyay, A.P.P.

----

5. 20.10.2008. This application at the instance of husband of the complainant of Complaint Case No.478(C) of 2005 has been filed for the quashing of the entire criminal proceeding emanating therefrom including the order dated 27.4.2006 passed therein by the learned Sub Divisional Judicial Magistrate, Barh, whereby he has taken cognizance of offences under Sections 341 and 323 I.P.C. only against the petitioner.

WEB COPY NOT OFFICIAL

It may be stated at the very outset that although the complainant, impleaded herein as O.P. No.2, has put in her appearance in the case by filing a vakalatnama yet at the time of the hearing of this case her accredited counsel was conspicuous by his absence.

Sona Devi, the complainant, filed the aforesaid complaint on 22.8.2005 against the petitioner and 8 others before the Additional Chief Judicial Magistrate, Barh, inter alia alleging that her husband

under the influence of a nincompoop , Bal Kishun Choudhary, always assaulted her demanding dowry of Rs.10,000/- . It is said that as she was being tortured by the petitioner and the others impleaded in the complaint petition, for non fulfillment of dowry demand, she had lodged a Complaint Case No.73(C) of 2003 before the learned Additional Chief Judicial Magistrate, Patna City,who transferred the same to the Sub Divisional Judicial Magistrate, Patna City, for inquiry under Section 202 Cr.P.C. and following the inquiry a prima facie case under Sections 323 and 504 I.P.C. as also Sections 3/4 of the Dowry Prohibition Act was found to have been made out. A compromise petition was filed therein on 8.12.2003 with husband giving an undertaking to keep her with all dignity and honour and she continued to live in the matrimonial home and in due course gave birth to a daughter and a son. However, it is alleged, notwithstanding the assurances given in the compromise petition her torture, both mental and physical, continued at the instance of the said Bal Kishun Choudhary, for which she filed a petition in the court on 3.3.2005 which after hearing her on 5.8.2005 was fixed for hearing the accused on 30.8.2005. It is further alleged that on 5.8.2005 at about 6 in the morning she was assaulted with slaps and fists in the presence of her brother by the husband, mother-in-law, Girja Devi, nanad, Juli Devi and Chinta Devi , on the pretext that she was litigating with them even as she was living with them in the matrimonial home and unless she was ousted therefrom she would not withdraw the litigation and she was eventually ousted from the matrimonial home after her

WEB COPY NOT OFFICIAL

clothes and ornaments were confiscated whereupon she accompanied her brother to her parental house. It has also been alleged that two days later, i.e., on 7.8.2005 at about 10 A.M. her husband accompanied with Girja Devi, Chinta Devi and Bal Kishun Choudhary, arrived at her parental house and she was asked to put her thumb impression on some blank paper and when she asked the reasons therefor she was informed that a petition would be prepared for withdrawing the litigation and only if she provided the thumb impression would she be allowed to remain in her matrimonial home and all her clothing and ornaments would be returned to her. The complainant is said to have refused since the earlier compromise petition and assurances had not been acted upon whereupon she was slapped 3-4 times by her husband. It has also been stated that the complainant was not in a position to maintain herself and the two minor children born out of the wedlock with the petitioner.

WEB COPY NOT OFFICIAL

As stated above, after the inquiry under Section 202 Cr.P.C. the learned Sub Divisional Judicial Magistrate to whom the case was transferred took cognizance under Sections 341 and 323 I.P.C. only against the petitioner after having noticed that the complainant had earlier filed a case at Patna City and was of the opinion that the instant assault and criminal trespass was a subsequent event.

It has been submitted on behalf of the petitioner that the complainant is a lady of questionable character and always demands money for fulfillment of the necessities of her parents and it was not possible for the petitioner to cater to such demands as he earned

meager livelihood by pulling rickshaw and apart from the wife he had to maintain his old widowed mother and two minor brothers. It has also been submitted that the learned Inquiring Magistrate tried his level best to restore the relationship of husband and wife between the complainant and the petitioner but she refused to live with the petitioner at Patna and would extend threats that his life would be ruined if he did not live with her at Bakhtiarpur at her parental home. The petitioner has also denied the alleged occurrence said to have taken place on the morning of 7.8.2005 and it has been submitted in this regard that the story was highly improbable and not to be believed and that it had been cooked up to bring the jurisdiction within the ambit of the court at Barh. In this connection, it was sought to be submitted that although the occurrence leading to her alleged ouster took place on 5.8.2005 and the subsequent occurrence took place on 7.8.2005 yet the complaint was not filed till 22.8.2005 and no reason has been assigned for the inordinate delay and this only goes to create a grave suspicion to the plausibility and probability of the complainant's version and amounts to an abuse of the process of the court.

WEB COPY NOT OFFICIAL

Admittedly, neither the complainant nor her counsel put an appearance during hearing of this application and hence the submissions advanced by the learned counsel for the petitioner remain unrebutted. It is also worth consideration whether the husband with the accomplises, two of whom were women, would come over to her parental home and assault her in the presence of her family members.

The story appears to be improbable. That apart a person would fear to break the assurances given to the court in a judicial proceeding. It is also worth consideration that when a case is already pending at Patna City whether there was any necessity of filing a fresh case before the Barh Court instead of taking steps in the case pending in Patna City Court when the alleged assault on her was a continuity of the earlier offences.

Due regard being had to the facts and the circumstances of the case as also to the fact that although three others had accompanied the petitioner in the occurrences of 5.8.2005 and 7.8.2005 the court on the same set of evidence took cognizance only against the petitioner and the other three were left free, the instant case would be an abuse of the process of the court. Accordingly, the application is allowed and the impugned order taking cognizance is hereby quashed.

(Abhijit Sinha,J)

P.S.

WEB COPY
NOT OFFICIAL